

# SENATE JOURNAL

OF THE

## IDAHO LEGISLATURE

FIRST REGULAR SESSION  
SIXTIETH LEGISLATURE

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ONE HUNDRED SECOND LEGISLATIVE DAY  
THURSDAY, APRIL 23, 2009

Senate Chamber

President Little called the Senate to order at 10 a.m.

Roll call showed all members present except Senators Goedde, Hammond, Keough, Pearce, Siddoway, and Acting Senator Thorson, absent and formally excused by the Chair; and Senators Bock and Coiner, absent and excused.

Prayer was offered by Chaplain Henry Webb.

The Pledge of Allegiance was led by Katrina Clayson, Page.

On request by Senator Davis, granted by unanimous consent, the Senate advanced to the Sixth Order of Business.

### Reports of Standing Committees

April 22, 2009

The JUDICIARY AND RULES Committee reports that [S 1133](#) and [S 1184](#) have been correctly enrolled.

DARRINGTON, Chairman

The President signed Enrolled [S 1133](#) and [S 1184](#) and ordered them transmitted to the House for the signature of the Speaker.

On request by Senator Davis, granted by unanimous consent, the Senate advanced to the Eighth Order of Business.

### Messages from the Governor

Senators Bock and Coiner were recorded present at this order of business.

April 22, 2009

The Honorable Brad Little  
President of the Senate  
Idaho Legislature

Dear Mr. President:

I have the honor to inform you that I have appointed Amy Herzfeld of Boise, Idaho, to be Acting State Senator for Legislative District 16, Ada County, State of Idaho.

This appointment is effective April 24, 2009, and will continue until such time as Senator Les Bock is able to resume his duties.

As Always - Idaho, *Esto Perpetua*  
/s/ C.L. "Butch" Otter  
Governor

THE OFFICE OF THE GOVERNOR  
EXECUTIVE DEPARTMENT  
BOISE, IDAHO  
**CERTIFICATE OF APPOINTMENT**

KNOW ALL MEN, by these Presents, that pursuant to the provisions of Section 59-917, *Idaho Code*, Les Bock, State Senator, District 16, Ada County, State of Idaho, has nominated Amy Herzfeld of Boise, Idaho, to perform the duties of this office temporarily as Acting State Senator, District 16, Ada County.

NOW, THEREFORE, I, C.L. "Butch" Otter, Governor of the State of Idaho, by virtue of the authority vested in me do hereby appoint Amy Herzfeld to the office of State Senator, District 16, Ada County, State of Idaho, for a term commencing on April 24, 2009, and continuing until such time as Senator Bock is able to resume his duties.

IN TESTIMONY WHEREOF, I have hereunto set my hand and caused to be affixed the Great Seal of the State of Idaho.

Done at Boise, the Capital of Idaho, this Twenty-second day of April, in the year of our Lord two thousand nine and of the Independence of the United States of America, the two hundred thirty-third year.

/s/ BY THE GOVERNOR C.L. "BUTCH" OTTER  
/s/ SECRETARY OF STATE BEN T. YSURSA

The correspondence and Certificate of Appointment were ordered filed in the office of the Secretary of the Senate.

April 21, 2009

The Honorable Brad Little  
President of the Senate  
Idaho Legislature

Dear Mr. President:

I have the honor to inform you that I have signed today and am transmitting to the Secretary of the State the following Senate Bill, to wit:

[S 1088](#), as amended in the House

As Always - Idaho, *Esto Perpetua*  
/s/ C.L. "Butch" Otter  
Governor of Idaho

The correspondence was ordered filed in the office of the Secretary of the Senate.

April 22, 2009

The Honorable Brad Little  
President of the Senate  
Idaho Legislature

Dear Mr. President:

I have the honor to inform you that I have signed today and am transmitting to the Secretary of the State the following Senate Bill, to wit:

[S 1054](#), [S 1086](#), as amended in the House,  
[S 1121](#), as amended in the House, [S 1141](#), as  
amended, as amended, [S 1145](#), and [S 1186](#)

As Always - Idaho, *Esto Perpetua*  
/s/ C.L. "Butch" Otter  
Governor of Idaho

The correspondence was ordered filed in the office of the Secretary of the Senate.

April 22, 2009

The Honorable Brad Little  
President of the Senate  
Idaho Legislature

Dear Mr. President:

I hereby advise you that I am transmitting today to the Office of the Secretary of State, the following Senate Bill, which will be allowed to become law without my signature:

S 1110, as amended in the House

within the time limited by law.

I am allowing **S 1110**, as amended in the House, to become law without my signature for purely philosophical reasons relating to the federal government. I disagree with the premise that the federal government can place refugees in the state with an expectation that they will be provided public assistance as part of their assimilation program.

The bill gives greater flexibility to refugees who must provide documentation that they are in the United States legally and may speed up the eligibility process for a few refugees who do not have the required documentation. In essence, this legislation will do no harm, but is not critical to the process. It is an expansion of the federal means for identifying these individuals, and as such I will remain neutral in my consideration of this legislation.

As Always - Idaho, *Esto Perpetua*  
/s/ C.L. "Butch" Otter  
Governor of Idaho

The correspondence was ordered filed in the office of the Secretary of the Senate.

On request by Senator Davis, granted by unanimous consent, the Senate returned to the Third Order of Business.

#### Reading and Correction of the Journal

The JUDICIARY AND RULES Committee reports that the Senate Journal of the proceedings of April 22, 2009, was read.

DARRINGTON, Chairman

On request by Senator Davis, granted by unanimous consent, the Journal of April 22, 2009, was corrected as follows:

In the Eighth Order of Business, Messages from the Governor, immediately following a unanimous consent request by Senator Davis that **S 1187** and **S 1191** be recommitted to the Finance Committee, insert: "Moved by Senator Davis, seconded by Senator Cameron, that **S 1187** and **S 1191** be recommitted to the Finance Committee. Senator Werk rose to a point of order."

The report was ordered filed in the office of the Secretary of the Senate.

On request by Senator Davis, granted by unanimous consent, the Senate advanced to the Twelfth Order of Business.

#### Second Reading of Bills

Senators Siddoway and Hammond were recorded present at this order of business.

S 1228, by Finance Committee, was read the second time at length and filed for third reading.

On request by Senator Davis, granted by unanimous consent, the Senate advanced to the Fifteenth Order of Business.

#### Miscellaneous Business

On request by Senator Davis, granted by unanimous consent, the following Letter of Protest submitted by Senator Davis, Majority Leader, was spread upon the pages of the Journal:

#### SIXTIETH IDAHO LEGISLATURE FIRST REGULAR SESSION 2009

#### PROTEST

OBJECTING TO THE SENATE'S ACTION IN ALLOWING THE MINORITY PARTY'S PROTEST REGARDING THE PRESIDENT'S RULING OF VETOED BILLS TO BE ENTERED, AS WRITTEN, IN THE JOURNAL

Pursuant to Rule 44 of the Idaho State Senate, I, Bart M. Davis, Majority Leader, do hereby respectfully protest the action of the Senate in spreading the Protest of the Minority Leadership on the pages of the journal on April 22, 2009. In reliance thereof, I do submit:

Minority Leadership Protest. Minority Leadership asserts that the Senate has violated Article 4, Section 10 of the Idaho Constitution and Senate Rules by tabling certain bills vetoed by Governor C. L. Butch Otter. The Minority Leadership asserts that the Senate is mandated to override or sustain the Governor's vetoes of twelve (12) Senate bills as described in the two April 21, 2009 veto messages, submitted to the Senate on April 22, 2009. The Minority Leadership is wrong. No violation occurred. The Idaho State Senate's actions are consistent with the Senate's historical practice, Senate Rules, *Mason's Legislative Manual*, and an Attorney General's legal guidance letter, interpreting the very constitutional and procedural issues protested by Minority Leadership.

1. Historical Practice. The historical practice of the Idaho State Senate includes a practice by which the Senate chose to recommit, by unanimous consent, vetoed legislation to the germane committee. The Senate Journal is replete with examples inconsistent with the current position of Minority Leadership as stated on the Senate floor and in their written Protest of April 22, 2009. For example, a review of the prior day's journal illustrates that eight (8) vetoed bills were recommitted, by unanimous consent, to the Senate Finance Committee. *Senate Journal*, April 20, 2009, pp 3-4. Such recommitment, without an express vote to override or sustain the vetoes, was consented to by the same Minority Leadership protesting the Senate's substantially similar procedural actions two days later.

2. Senate Rules. The Journal of April 22, 2009 reflects that it received two separate *Messages from the Governor* containing vetoes of twelve (12) additional bills. The Journal also reflects that immediately after the reading of the Governor's veto message, the Senate Majority Leader "requested unanimous consent that **S 1187** and **S 1191** be recommitted to the Finance Committee. Senator Kelly objected." The journal, as corrected, shows the Senate Majority Leader moved to recommit the bills to the Senate Finance Committee. The motion was seconded, but subsequent to Senator Werk's point of order and prior to calling the question, the Senate Majority Leader moved to lay the bills, described therein, on the table, which motion has precedence over the motion to recommit. Senate Rule 28(C). Such motion

was prior to any question being posed by the Senate President to the Senate. The motion passed. Although Senate Rule 16 limits the Senate to consideration of seven (7) motions, that limitation is only applicable "[w]hen the question of reconsideration has been stated..." No such question was posed. Therefore, the motion to lay on the table was in order. The President's ruling was correct.

3. Mason's Legislative Manual. Senate Rule 48 provides that *Mason's Legislative Manual* govern, except when there is a rule or joint rule that is inconsistent. As provided in section 3 of this Protest, there is no inconsistent rule. Section 755 (3) of *Mason's* provides: "Legislation returned by the executive with objections is usually considered promptly but may be referred to committee or laid on the table." [emphasis added] The Idaho Senate has both recommitted vetoed bills to committee and laid on the table vetoed bills, including those of this week. The historic practice of the Idaho Senate, including the action taken on April 22, 2009, is consistent with *Mason's*. In addition, *Mason's* provides that the Senate's rules of procedure govern the interpretation or construction of its constitutional method of considering vetoed bills. Section 754 (7).

4. Attorney General's Guidance Letter. On April 1, 1980, the Idaho Attorney General's office rendered a legal guidance letter on this very point, to wit, does the Idaho Constitution mandate that the legislature reconsider bills vetoed by the Governor? In short, the guidance provides that the "three methods by which constitutionally mandated reconsideration can be accomplished are: 1) lay on the table, 2) postpone consideration to a day certain, or 3) refer the matter to an appropriate committee." The Senate President properly ruled that the motions to lay the vetoed bills on the table were properly moved and seconded. The Senate concurred and the bills were laid on the table.

In summary, the Senate President's rulings are consistent with Idaho's Constitution in that such rulings are consistent with Senate historical practice, Senate Rules, *Mason's Legislative Manual*, and an Attorney General's legal guidance letter. I protest the Senate's action in entering on the Journal a flawed Protest that incorrectly characterizes Idaho law and Senate rules, together with that Protest's failure to recognize the Senate's historical practice and customs.

DATED: APRIL 23, 2009

/s/ BART M. DAVIS

MAJORITY LEADER

On motion by Senator Davis, seconded by Senator Kelly, by voice vote, the Senate adjourned at 11:50 a.m. until the hour of 8:30 a.m., Friday, April 24, 2009.

BRAD LITTLE, President

Attest: JEANNINE WOOD, Secretary